

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

YURMAN STUDIO, INC. and YURMAN DESIGN, INC., : Civil Action No. 07-1241 (SAS)(HP)
: (Action No. 1)

Plaintiffs/Counter-Defendants,

- against -

ELENA CASTANEDA and EJEWELER LLC
d/b/a OVERSTOCKJEWELER.COM,

Defendants/Counter-Plaintiffs.

**Civil Action No. 07-1241 (SAS)(HP)
(Action No. 1)**

CARTIER, a division of RICHEMONT NORTH AMERICA, INC., CARTIER INTERNATIONAL, N.V., CARTIER CREATION STUDIO, S.A., VAN CLEEF & ARPELS S.A., VAN CLEEF & ARPELS, INC., VAN CLEEF & ARPELS DISTRIBUTION, INC., GUCCI AMERICA, INC., and BULGARI S.p.A.,

Plaintiffs,

- against -

ELENA CASTANEDA and EJEWELER LLC
d/b/a OVERSTOCKJEWELER.COM,

Defendants.

**Civil Action No. 07-7862 (SAS)(HP)
(Action No. 2)**

**DECLARATION OF COSTANZO RAPONE, ESQ. IN SUPPORT OF BULGARI S.p.A.'S
MOTION FOR PARTIAL SUMMARY JUDGMENT**

COSTANZO RAPONE, pursuant to 28 U.S.C. §1746, declares under penalty of perjury that the following is true and correct to the best of his knowledge:

1. I am the General Counsel of Bulgari S.p.A (“Bulgari”). I make this declaration in support of Bulgari’s motion for partial summary judgment.

THE BULGARI BUSINESS AND THE WORLD FAMOUS BULGARI BRAND

2. Bulgari is an Italian corporation with its principal place of business in Rome, Italy.

3. Bulgari was founded by Sotirio Bulgari in 1884. In 1905, Sotirio Bulgari, along with his sons Costantino and Giorgio, opened a shop in via Condotti, where the Bulgari flagship store is located.

4. From its modest beginnings, Bulgari has grown to become one of the world's best known and most revered jewelers. The BVLGARI and BULGARI trademarks, which have been used in the United States for fine jewelry products since 1970 and for luxury watches since 1977, have become synonymous with luxurious and elegant products and services, and innovation and design.

5. Bulgari stores in New York City are located at exclusive locations at 730 Fifth Avenue and 783 Madison Avenue. New York City was Bulgari's first international retail location. The BVLGARI brand is now highly successful and well-known throughout the United States.

BULGARI'S VALUABLE INTELLECTUAL PROPERTY RIGHTS

6. Bulgari diligently protects and enforces its most important assets, its intellectual property rights. Over the years, Bulgari has obtained, among other forms of intellectual property registrations, design patents from the United States Patent and Trademark Office ("USPTO") covering various novel and non-functional ornamental designs incorporated into certain of its unique and innovative jewelry designs.

7. The following chart depicts certain of the design patents that Bulgari has obtained from the USPTO (collectively referred to as the "Bulgari Design Patents") in connection with its world famous SPIGA and BZERO1 collections:

U.S. Patent No.	Claim	Drawing	Date of Patent	Registered Owner
D338,629	The ornamental design for a finger ring		August 24, 1993	Bulgari, S.p.A.
D434,688	The ornamental design for a ring		December 2, 2000	Bulgari, S.p.A.
D545,716	The ornamental design for an earring		July 3, 2007	Bulgari, S.p.A.

OVERSTOCK JEWELER'S INFRINGING CONDUCT

8. Overstock Jeweler has been offering for sale and selling jewelry and watch products that deliberately and slavishly copy and infringe the Bulgari Design Patents through its web site — www.overstockjeweler.com.

9. When Bulgari commenced this infringement action against Overstock Jeweler in September 2007, Overstock Jeweler was offering for sale and selling approximately 48 Bulgari knockoff jewelry and watch products, which blatantly infringe Bulgari's various intellectual property rights. Remarkably, despite the commencement of this action, the number of Bulgari knockoff jewelry and watch products offered through the www.overstockjeweler.com web site has grown to approximately 62 today.

10. Bulgari has identified three jewelry products being offered for sale and sold by Overstock Jeweler that are studied and slavish imitations of the novel and non-functional ornamental jewelry designs that are the subject of the Bulgari Design Patents.

11. A chart comparing the designs covered by the Bulgari Design Patents and the corresponding jewelry products being offered for sale and sold by Overstock Jeweler shows the Overstock Jeweler products are identical, or virtually so, to the Bulgari designs.

12. Annexed hereto as Exhibits A - C are certified copies of each of the individual Bulgari Design Patents, copies of printouts from www.overstockjeweler.com, which depict each corresponding Overstock Jeweler jewelry product that Bulgari alleges infringes the Bulgari Design Patent, and a comparison of the novel and non-functional ornamental jewelry designs that are the subject of the Bulgari Design Patents and the allegedly infringing Overstock Jeweler products.

13. Any attempt by Overstock Jeweler to argue that the jewelry products being offered for sale and sold through its web site were not copied from, and were not intended to be substantially indistinguishable from the novel and non-functional ornamental jewelry designs that are the subject of the Bulgari Design Patents, is belied by the manner in which Overstock Jeweler markets and promotes its products — namely, as being indistinguishable from and of comparable quality to the genuine Bulgari Design Patents.

14. By way of example only, Overstock Jeweler markets and promotes a ring (Item No. R-Bzero1) that Bulgari alleges infringes its design patent in a substantial similar, indeed identical, ornamental jewelry design for a ring (Design Patent D434,688) — which by no coincidence, Overstock Jeweler markets and promotes by reference to the BZERO1 trademark, which is registered to Bulgari. The similarities between the Bulgari design (Design Patent D434,688) and the infringing Overstock Jeweler product (Item No. R-Bzero1) are obvious:

Bulgari Design Patent (D434,688)	Infringing Overstock Jeweler Product
	 R-Bzero1

15. Moreover, Overstock Jeweler refers to Item No. B-zero1 as a "Bulgari Bzero1 Inspired Sterling Silver Ring with Pave CZ Diamonds", and further describes it as a "beautiful Bulgari Bzero1 style Inspired ring" in its product description. Overstock Jeweler, in fact, goes so far as to state in its description of Item No. B-zero1, that "it evokes the same understated elegance" as the genuine Bulgari piece. Moreover, I understand that when asked during her deposition to describe the way in which Overstock Jeweler Item No. B-zero1 was "inspired" by Bulgari's novel and non-functional ornamental design, Defendant Elena Castaneda, the owner of Overstock Jeweler, conceded that Overstock Jeweler Item No. B-zero1 is "similar in shape" to the Bulgari Design Patent (Design Patent D434,688). True and correct copies of excerpts from the transcript of Ms. Castaneda's March 18, 2008 deposition are attached hereto as Exhibit D.

16. It is no coincidence that Overstock Jeweler has decided to copy jewelry items from Bulgari's SPIGA (*see Exhibit A*) and BZERO1 (*see Exhibits B and C*) collections, among others, as these are some of our most popular and successful collections. Overstock Jeweler wants to hide behind the fact that it describes these items as "Inspired by Bulgari". However, while doing so, time and again, it unwittingly admits copying these famous designs, which are protected in their own right.

17. As is clear from the above example, Overstock Jeweler exists solely to profit from Bulgari's and other internationally recognized jewelry and watch designs. Accordingly, there can be no doubt that Overstock Jeweler is purposefully and willfully infringing the Bulgari Design Patents.

DECLARED UNDER PENALTY OF PERJURY THIS 12 DAY OF JUNE, 2008.



Costanzo Rapone